

WFG Underwriting Bulletin



To: All Virginia Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: June 28, 2016
Bulletin No. VA 2017-04
Subject: Tenancy by the Entirety

§55-20.2, Code of Virginia, provides for tenancies by the entirety:

§ 55-20.2. Tenants by the entireties in real and personal property; certain trusts.

A. Any husband and wife may own real or personal property as tenants by the entireties. Personal property may be owned as tenants by the entireties whether or not the personal property represents the proceeds of the sale of real property. An intent that the part of the one dying should belong to the other shall be manifest from a designation of a husband and wife as "tenants by the entireties" or "tenants by the entirety."

It was a generally accepted tenet that because a tenancy by the entirety was considered a single, indivisible entity, one spouse could not sever the tenancy by his or her individual act without the joinder of the other. However, in 2015, the Supreme Court of Virginia decided to the contrary in *Evans v. Evans*, 290 Va. 176. Although the facts in the case were somewhat more complex, the Supreme Court held that the evidence was sufficient for it to conclude that it was the intention of the parties that their tenancy by the entirety property should belong to the wife alone even though the deed conveying the property to her was executed only by the husband.

In response, the 2017 Virginia legislature passed a revision to §55-20.2 of the Code of Virginia by adding a new Section B (and redesignating the previous Section B as Section C):

B. Except as otherwise provided by statute, no interest in real property held as tenants by the entireties shall be severed by written instrument unless the instrument is a deed signed by both spouses as grantors.

This change is effective July 1, 2017 and is not retroactive; deeds executed prior to the effective date by only one spouse in a tenancy by the entirety will have to be evaluated on a case-by-case basis subject to an analysis expressed by the Supreme Court in *Evans*.

NOTE 1: §55-52 of the Code of Virginia, relating to after-acquired property, was not amended similarly. It is unclear, then, the effect of one spouse deeding property to the other spouse before a divorce decree has been entered; is the deed void, or is it validated upon entry of the final decree?

NOTE 2: The legislature did not amend Subsection A of §55-20.2; it still defines a tenancy by the entirety as being between a husband and wife. It is therefore uncertain if same-sex spouses are entitled to hold property as tenants by the entirety, and if they are, whether the act of one spouse can sever it.

Any questions on conveyances of tenancy by the entirety property based on the above should be referred to underwriting counsel.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.